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Taxpayer =
Date1 =
Year1 =

Dear :

This letter responds to a letter dated November 22, 2011, and supplemental information provided on December 5, 2011, submitted by Taxpayer requesting a letter ruling under § 168 of the Internal Revenue Code regarding the classification of certain cellular antenna towers under Rev. Proc. 87-56, 1987-2 C.B.674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785.

FACTS

Taxpayer, the parent of a consolidated group of corporations, is a leading owner and operator of communications sites for the wireless and broadcast industries. Taxpayer constructs and places in service cellular antenna towers both on land and on buildings. Taxpayer leases space on these towers primarily to cellular telecommunications companies. Cellular antenna towers include freestanding antenna towers, large self supporting towers, support structures, rooftop platforms, and where applicable, the concrete foundation on which the antenna support structure is permanently affixed.

Taxpayer placed in service cellular antenna towers located on land (land towers) in the taxable year ending Date1 (the Year1 taxable year). The land towers are permanently affixed via a concrete foundation. These land towers are large steel structures generally ranging from 50 to 2,000 feet high and are bolted or welded to a concrete base set upon pilings driven into the ground in the order of 5 to 50 feet. As a result, the land towers are located both above ground and are anchored below ground.

The land towers are constructed to remain permanently in place, not readily moved, unlikely to be moved, and not intended to be moved. The effort required to remove the smallest land tower requires approximately 10 days with a team of 6 people and heavy equipment to dig at least 5 feet underground. Moreover, in the unlikely event that the land tower is moved, the land tower is generally scrapped and a new land tower is constructed using new steel.

Taxpayer placed in service cellular antenna towers located on building rooftops in the taxable year ending Date1 (the Year1 taxable year). The cellular antenna towers that are affixed to building rooftops are generally installed in urban or densely populated areas where construction of a land tower is not feasible. Taxpayer has two types of cellular antenna towers that are affixed to building rooftops. One type of Taxpayer's cellular antenna towers affixed to building rooftops are cellular antenna towers that are affixed to steel platforms (rooftop towers). A second type of Taxpayer's cellular antenna towers that are affixed to building rooftops are steel platforms where the steel platform itself acts as a horizontal tower (horizontal towers). The steel platforms are heavy duty steel structures that are specially constructed and permanently affixed into the infrastructure of the roof and building structure with bolts and/or welds. The method of construction and incorporation of a platform into a building structure is labor intensive and costly. Taxpayer represents that the platforms are constructed to remain permanently in place, cannot be readily moved, are unlikely to be moved, and are not intended to be moved.

Taxpayer represents that while the land towers, rooftop towers, and horizontal towers can be moved, removals are infrequent, expensive, and undesirable from an operational and tenant relations point of view.

Taxpayer also represents the following:

1. The cellular antenna towers located on land, not including the concrete foundations, that were placed in service during the Year1 taxable year are inherently permanent structures under the Whiteco factors. See Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664, 672-673 (1975).
2. The cellular antenna towers located on rooftops, not including the steel platforms, that were placed in service during the Year1 taxable year are inherently permanent structures under the Whiteco factors. Id.
3. The platforms affixed to building rooftops, which function as horizontal towers, that were placed in service during the Year1 taxable year are inherently permanent structures under the Whiteco factors. Id.
4. The concrete foundations that are used to support the cellular antenna towers located on land that were placed in service during the Year1 taxable year are inherently permanent structures under the Whiteco factors. Id.

5. The steel platforms that are used to support the cellular antenna towers located on rooftops that were placed in service during the Year1 taxable year are inherently permanent structures under the Whiteco factors. Id.

RULING REQUESTED

Taxpayer's land towers, horizontal towers, and rooftop towers and their supporting foundations (*i.e.*, concrete foundations for the land towers and steel platforms for the rooftop towers) are included in asset class 00.3, Land Improvements, of Rev. Proc. 87-56 for purposes of § 168 of the Internal Revenue Code.

LAW AND ANALYSIS

Section 167(a) provides a depreciation allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in a trade or business or held for the production of income.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section describes two methods of accounting for determining depreciation allowances: (1) the general depreciation system in § 168(a); and (2) the alternative depreciation system in § 168(g). Under either depreciation system, the depreciation deduction would be computed by using a prescribed depreciation method, recovery period, and convention.

For purposes of § 168(a) or 168(g), the applicable recovery period is determined by reference to class life or by statute. Section 168(i)(1) provides that the term "class life" means the class life (if any) that would be applicable with respect to any property as of January 1, 1986, under § 167(m) (determined without regard to § 167(m)(4) and as if the taxpayer had made an election under § 167(m)) as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990. Prior to its revocation, § 167(m) provided that in the case of a taxpayer who elected the asset depreciation range system of depreciation, the depreciation deduction was based on the class life prescribed by the Secretary which reasonably reflects the anticipated useful life of that class of property to the industry or other group.

Section 1.167(a)-11(b)(4)(iii)(b) of the Income Tax Regulations sets out the rules for asset classification under former § 167(m). Property is included in the asset guideline class for the activity in which the property is primarily used. Property is classified according to primary use even though the activity in which such property is primarily used is insubstantial in relation to all the taxpayer's activities.

Section 1.167(a)-11(e)(3)(iii) provides that in the case of a lessor of property, unless there is an asset guideline class in effect for lessors of such property, the asset guideline class for such property shall be determined as if the property were owned by

the lessee. However, in the case of an asset guideline class based upon the type of property (such as trucks or railroad cars) as distinguished from the activity in which used, the property shall be classified without regard to the activity of the lessee.

Rev. Proc. 87-56 sets forth the class lives of property subject to depreciation under § 168. The revenue procedure establishes two broad categories of depreciable assets: (1) asset classes 00.11 through 00.4 that consist of specific assets used in all business activities; and (2) asset classes 01.1 through 80.0 that consist of assets used in specific business activities. The same depreciable asset can be described in both an asset category (that is, asset classes 00.11 through 00.4) and an activity category (that is, asset classes 01.1 through 80.0), in which case the item is classified in the asset category. See Norwest Corporation & Subsidiaries v. Commissioner, 111 T.C. 105 (1998) (item described in both an asset and an activity category (furniture and fixtures) is placed in the asset category). The asset classes described below are set forth in Rev. Proc. 87-56.

Asset class 00.3, Land Improvements, includes improvements directly to or added to land, whether such improvements are § 1245 property or § 1250 property, provided such improvements are depreciable. Examples of the assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers (not including municipal sewers in asset class 51 of Rev. Proc. 87-56), wharves and docks, bridges, fences, landscaping, shrubbery, or radio and television transmitting towers. Asset class 00.3 does not include land improvements explicitly included in any other class, or buildings and structural components as defined in § 1.48-1(e). Assets in this class have a recovery period of 15 years for purposes of § 168(a) and 20 years for purposes of § 168(g).

Asset class 48.14, Telephone Distribution Plant, includes such assets as pole lines, cable, aerial wire, underground conduits, and comparable equipment, and related land improvements as defined in Federal Communications Commission Part 31 Account Nos. 241, 242.1, 242.2, 242.3, 242.4, 243, and 244. Assets in this class have a recovery period of 15 years for purposes of § 168(a) and 24 years for purposes of § 168(g).

The depreciation classification of Taxpayer's land towers, horizontal towers, and rooftop towers and their supporting foundations (*i.e.*, concrete foundations for the land towers and steel platforms for the rooftop towers) depends whether the towers and foundations are inherently permanent structures. This determination is made by applying the factors set forth in Whiteco Industries, Inc. v. Commissioner, 65 T.C. 664, 672-673 (1975), acq., 1980-1 C.B. 1. No one factor is decisive. See JFM, Inc. and Subsidiaries v. Commissioner, T.C.M. 1994-239.

The Whiteco factors are: (1) Is the property capable of being moved, and has it in fact been moved? (2) Is the property designed or constructed to remain permanently

in place? (3) Are there circumstances that tend to show the expected or intended length of affixation, that is, are there circumstances that show the property may or will have to be moved? (4) How substantial a job is removal of the property, and how time-consuming is it? (5) How much damage will the property sustain upon its removal? (6) What is the manner of affixation of the property to the land?

Rev. Proc. 2011-22, 2011-18 I.R.B. 737, provides a safe harbor method of accounting for determining the recovery period for depreciation of certain tangible assets used by wireless telecommunication carriers. The safe harbor applies to a taxpayer that has a depreciable interest in wireless telecommunication assets (as described in section 3 of Rev. Proc. 2011-22) used primarily to provide wireless telecommunication or broadband services by mobile phones (for example, cell phones or smartphones). The safe harbor does not apply to a taxpayer that is primarily a cable operator. See section 4 of Rev. Proc. 2011-22. A self-supporting antenna support structure (also known as a tower) for mounting antennas is one of the wireless communication assets described in section 3 of Rev. Proc. 2011-22.

Section 5 of Rev. Proc. 2011-22 provides that the Internal Revenue Service will not challenge a taxpayer's classification of the wireless telecommunication assets located at the taxpayer's cell sites and described in section 5.02 of this revenue procedure. One of these assets is an antenna support structure (also known as a tower) affixed to a foundation (for example, a concrete foundation, a building rooftop, or a building wall). Specifically, the Service will not challenge: (a) the antenna support structure itself, whether on a building or land, being classified as personal property with no class life with a recovery period of 7 years for purposes of § 168(a) and 12 years for purposes of § 168(g); and (b) concrete foundation (including the bolts embedded therein) upon which the antenna support structure is installed as being in asset class 00.3 of Rev. Proc. 87-56 with a recovery period of 15 years for purposes of § 168(a) and 20 years for purposes of § 168(g). See section 5.02(6) of Rev. Proc. 2011-22.

By classifying the antenna support structure itself as personal property with no class life, the Service is treating the antenna support structure itself for purposes of Rev. Proc. 2011-22 as: (1) not being an inherently permanent structure; and (2) not being classified in any asset class of Rev. Proc. 87-56 or in § 168(e)(2) and (3) (except for § 168(e)(3)(C)(v)). By classifying the concrete foundation upon which the antenna support structure is installed as being in asset class 00.3, the Service is treating such concrete foundation for purposes of Rev. Proc. 2011-22 as: (1) being an inherently permanent structure; and (2) a land improvement that is not specifically excluded from asset class 00.3 or specifically included in asset class 48.14.

In this case, Taxpayer has a depreciable interest in land towers, rooftop towers, and horizontal towers that are used primarily by cellular telecommunications companies. Consequently, Taxpayer is within the scope of Rev. Proc. 2011-22.

Consistent with section 5.02(6)(a) of Rev. Proc. 2011-22, Taxpayer's land towers, horizontal towers, and rooftop towers are not classified in asset class 48.14 of Rev. Proc. 87-56. Cf. Broz v. Commissioner, 137 T.C. No. 3 (2011). However, based solely on Taxpayer's representations that the land towers, horizontal towers, and rooftop towers placed in service by Taxpayer during the Year1 taxable year are inherently permanent structures based on the factors described in Whiteco Industries Inc., 65 T.C. at 672-673, it is inappropriate to classify these towers as personal property, as described in Rev. Proc. 2011-22, section 5.02(6)(a). Instead, based on such representations, we conclude that these towers are land improvements within asset class 00.3 of Rev. Proc. 87-56.

Moreover, Taxpayer represents that the concrete foundations upon which the Taxpayer's land towers are installed are inherently permanent structures based on the factors described in Whiteco Industries Inc., 65 T.C. at 672-673. Taxpayer also represents that the steel platforms upon which the rooftop towers are installed (which are not horizontal towers) are inherently permanent structures based on the factors described in Whiteco Industries Inc., 65 T.C. at 672-673. Based solely on these representations and consistent with section 5.02(6)(b) of Rev. Proc. 2011-22, we conclude that these concrete foundations and steel platforms are land improvements within asset class 00.3 of Rev. Proc. 87-56.

CONCLUSION

Taxpayer's land towers, horizontal towers, and rooftop towers and their supporting foundations (*i.e.*, concrete foundations for the land towers and steel platforms for the rooftop towers) are included in asset class 00.3, Land Improvements, of Rev. Proc. 87-56 for purposes of § 168.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Moreover, no opinion is expressed or implied as to whether the land towers, horizontal towers, rooftop towers, the concrete foundations upon which the land towers are installed, or the steel platforms upon which the rooftop towers are installed (which are not horizontal towers) are inherently permanent structures under the factors described in Whiteco Industries Inc., 65 T.C. at 672-673.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives. We also are sending a copy of this letter to the appropriate operating division director.

Sincerely,

Kathleen Reed

Kathleen Reed
Branch Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

copy of this letter

copy for section 6110 purpose s